

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

CHARLES CAWHORN,)	
)	
Plaintiff,)	Case No. 4:20-cv-1400
)	
v.)	
)	
MAGNITUDE 7 METALS, INC., et al.,)	Removal from
)	New Madrid County Circuit Court
)	Case No. 20NM-CV00471
Defendant.)	

DEFENDANT MAGNITUDE 7 METALS' NOTICE OF REMOVAL

Defendant Magnitude 7 Metals, LLC ("Magnitude 7"), through the undersigned counsel, hereby removes the state court action entitled *Charles Cawhorn vs. Magnitude 7 Metals, Inc., et al.*, Case No. 20NM-CV00471 (filed in the Circuit Court of New Madrid County, Missouri).

INTRODUCTION

1. On August 21, 2020, Plaintiff filed his Petition against Magnitude 7 and Defendant Donna Rusche in the Circuit Court of New Madrid County, Missouri, Case No. 20NM-CV00471 ("State Court Action") alleging:

- a. Count I: Interference with rights in violation of the Family and Medical Leave Act ("FMLA"),
- b. Count II: Disability discrimination in violation of the Americans with Disabilities Act ("ADA"),
- c. Count III: Failure to accommodate in violation of the ADA,
- d. Count IV: Retaliation in violation of the ADA, and
- e. Count V: disability discrimination in violation of the Missouri Human Rights Act ("MHRA").

2. Pursuant to 28 U.S.C. § 1446(a), a copy of the state court action, along with all process, pleadings and orders filed and served in the State Court Action prior to this removal are attached hereto as **Exhibit A**. Plaintiff's Petition is also separately attached hereto as **Exhibit B**.

3. A copy of the Civil Cover Sheet completed in connection with this case is attached hereto.

4. As more fully set forth below, this case is properly removed to this Court pursuant to 28 U.S.C. § 1331 because Plaintiff asserts claims arising under federal law, namely the FMLA and ADA, such that federal question jurisdiction exists. *See Exhibit B*, Count I, II, III, and IV.

BASIS FOR REMOVAL

5. Federal district courts have original jurisdiction over claims "arising under the Constitution, treaties, or laws of the United States." 28 U.S.C. § 1331.

6. A claim arises under the laws of the United States when a federal question is presented on the face of a plaintiff's properly pleaded complaint. *Caterpillar, Inc. v. Williams*, 42 U.S. 386, 392 (1987).

7. The presence of a single federal claim gives the defendant the right to remove the case to federal court. *See Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003); *Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009).

8. In any civil action of which the district courts have original jurisdiction, "the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). "Claims within the action are part of the same case or controversy if they 'derive from a common nucleus of operative fact.'" *Myers v. Richland County*, 429 F.3d 740, 7446 (8th Cir. 2005) (quoting *City of Chicago v. International College*

of Surgeons, 522 U.S. 156, 165) (1997))

9. Plaintiff's Petition raises a federal question as Plaintiff alleges Magnitude 7 violated the FMLA and the ADA, and thus this Court has original jurisdiction over those claims pursuant to 28 U.S.C. § 1331, and removal to this Court is proper. *See Exhibit B*, Counts I, II, III, and IV.

PROPER VENUE

10. The United States District Court for the Eastern District of Missouri includes New Madrid County, where the state court action is now pending, and thus this action is properly removed to the Eastern District of Missouri pursuant to 28 U.S.C. § 1441(a).

TIMELINESS OF REMOVAL

11. Magnitude 7 has timely filed this Notice of Removal within thirty (30) days of receipt of a copy of the Petition through service or otherwise pursuant to 28 U.S.C. § 1446(b).

CONCLUSION

12. Pursuant to 28 U.S.C. § 1446(d), Magnitude 7 is filing written notice of this removal and a copy of the Notice of Removal with the clerk of the Circuit Court for New Madrid County, Missouri, and will serve a copy of this notice on all parties to this action.

13. By filing this Notice of Removal, Magnitude 7 is not waiving any defense, jurisdictional or otherwise, which it may possess. Magnitude 7 also does not concede that Plaintiff has stated any proper claim against it.

Respectfully submitted,

/s/Carrie L. Kinsella

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2020, a true and correct copy of the foregoing **Defendant Magnitude 7 Metals' Notice of Removal** was electronically filed with the court's CM/ECF system and that a true and correct copy was served via electronic mail upon the following:

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